

1988

# Olive M. Woodard v. Karl Woodard : Brief of Respondent

Utah Court of Appeals

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COURT OF APPEALS  
BRIEF

.A10

DOCKET NO.

**88 0644**

IN THE UTAH COURT OF APPEALS

OLIVE M. WOODARD,

Plaintiff/Respondent, )

vs. )

Case No. 880-<sup>044</sup>~~553~~-CA

KARL WOODARD,

Defendant/Appellant. )

Priority No. 14b.

BREIF OF RESPONDENT

ON APPEAL FROM A FINAL JUDGMENT FROM THE  
THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, UTAH  
THE HONORABLE KENNETH RIGTRUP

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**FILED**

JUL 12 1989

COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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OLIVE M. WOODARD,

Plaintiff/Respondent, )

vs. )

Case No. 880-565-CA

KARL WOODARD,

)

Priority No. 14b.

Defendant/Appellant. )

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BREIF OF RESPONDENT

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ON APPEAL FROM A FINAL JUDGMENT FROM THE  
THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, UTAH  
THE HONORABLE KENNETH RIGTRUP

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Respondent, OLIVE M. WOODARD, by and through her counsel of record, David K. Smith, and pursuant to Rule 24(b) of the Rules of the Utah Court of Appeals, submits the following Brief.

### JURISDICTION

This Court has jurisdiction over this appeal pursuant to Rule 3(a) of the Rules of the Utah Court of Appeals, in that it is an appeal taken from a district court to the Utah Court of Appeals from a final judgment and is considered a matter of right pursuant to Rule 4(a) of the Rules of the Utah Court of Appeals.

This case involves an appeal from a final judgment of the Third Judicial District Court, the Honorable Kenneth Rigtrup presiding, rendered after a non-jury trial.

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

The following issues are presented to this Court for review:

1. Did the trial court err in deciding the property

to be divided between the parties in regard to the property settlement portion of their divorce because:

(a) It did not forthwith divide all property between the parties, though it left the Appellant with a remainder equity in certain of the property.

(b) By allegedly failing to divide the marital assets equitably between the parties.

#### STATEMENT OF THE CASE

1. Appellant/Defendant (hereafter "Defendant") and Respondent/Plaintiff (hereafter "Plaintiff") were married to one another on August 1, 1933, and remained married for nearly 49 years. (Findings of Fact, paragraph 1)

2. A Decree of Divorce was entered on February 23, 1982, granting to the Plaintiff a divorce from the Defendant, and providing for a division of certain property between the parties. In essence, the Defendant received all of the marital property excepting for the balance due on a note in an approximate sum of \$37,488.26, which was believed to have been secured by the Fenton Ave. property, and one-half interest in a note on property located on Stratler.

(See paragraphs 4 and 6 of the Original Decree of Divorce)

3. On May 25, 1984, the lower Court set aside the property division based upon evidence presented to the Court which demonstrated that the Defendant had failed to disclose that the Fenton Ave. contract was in fact unsecured, and in fact, worthless. The Court indicated that had it been aware of the unsecured status of the note on the Fenton Ave. sale at the time, it would not have divided the property in the manner in which it had done. (Paragraphs 3 & 4, Findings of Fact)

4. In the subsequent trial from which this appeal is taken, it was learned that the Defendant had acquired three other properties prior to the entry of the divorce, and had not informed the Plaintiff nor the Court of this fact in the original divorce proceedings. (Findings of Fact, paragraph 19)

5. The Defendant was given an opportunity to demonstrate what, if any liens remained against the three properties acquired by him, but not disclosed to the Court, and he failed to demonstrate that any recorded liens existed against the property. (Transcript, page 253, lines 3-7; Paragraph 19, Findings of Fact)

6. The Defendant retains a mobile home on which he



resides, together with 30 acres of land near Fruitland, Utah, which is free and clear. He receives approximately \$605.00 per month in Social Security Benefits, raises a milk goat, and has the capacity to raise a garden, if he wishes, to assist him in providing for his needs. (Findings of Fact, paragraphs 7 and 9)

7. The Plaintiff receives \$193.00 per month Social Security Benefits, and \$165.00 per month in SSI benefits; she has no other source of income, other than baby sitting on occasion. She owns no real property and must rent at a present cost to her of \$250.00 per month. (Findings of Fact, paragraphs 6 and 10)

8. Both parties are presently approximately 74 years of age. (Findings of Fact, paragraph 5)

9. In attempting to fairly distribute the assets of the parties, the Court, in a Bench Decision, held that of the sums the Defendant received from his burn in approximately 1973, a portion of that would probably have represented a loss of future income, and thus a marital asset. While no set sum was determined from the burn recovery to have represented loss of future income, the Court did find that the Defendant imprudently managed these assets to a large degree and found that the Fruitland

property upon which the Defendant resides was purchased for \$27,000.00, and the Court determined that this was a reasonable valuation to be given for the personal injuries sustained by the Defendant from his burn settlement, and hence awarded the Defendant as his sole and separate property all of the Fruitland property, together with the trailer house, the well, water rights, and animals.

10. The Court further found that the Defendant used approximately \$35,500.00 of the monies received from his burn case to purchase and remodel the home located on Stratler, and that these funds were to be considered monies for loss of future income, a marital asset, and subject to equitable distribution between the parties. The Court noted that the Defendant received \$12,000.00 of the down payment and several monthly installments without having made any accounting thereof to the Plaintiff. (Findings of Fact, paragraph 14)

11. The Court then modified the alimony award from \$1.00 per year to allow for a more equitable distribution of the remaining assets which were determined to be marital assets. The Plaintiff was given the right to liquidate the Bryan Ave. property, the Gregson Ave. property, and the Claybourne property, realizing the maximum amounts that

could be obtained under the circumstances from them. She was allowed to pay off any claims that may have existed against the properties in order to sell them outright. Those funds along with the net proceeds remaining with the Clerk of the Court from the Stratlor contract, were allowed to be placed with a federally insured institution, and the Court allowed the Plaintiff to receive \$245.00 per month from these funds, and if this destroyed the SSI benefit, then the award was to be increased to offset the loss of the SSI award. The court did this because the income levels of the parties was unequal, and the trial judge was attempting to equalize the monthly incomes of each, without attempting to reduce the income received by the Defendant from his Social Security Benefit. (Conclusions of Law, paragraphs 28, 29 and 30)

12. The Court held that Mrs. Woodard was entitled to a monthly benefit so long as it lasts, and in the event that she died, one-half of any principal balance remaining was to go to her estate and the other half was to go to the Defendant's estate. (Conclusions of Law, paragraphs 32 and 33)

13. From the foregoing, it is apparent that the Court was attempting under these particular set of

circumstances, to maximize the income level of the Plaintiff to make it equal to that of the Defendant, and to distribute any balance after the death of the Plaintiff to the Defendant or his estate.

#### SUMMARY OF ARGUMENT

The trial court judge specifically found that both the Plaintiff and the Defendant were mentally alert and reasonably fit for their chronological ages. And although the court recognized that the Defendant had some ongoing problems with his eyes and scarring attendant to his wounds, that he was functionally no more disabled than the Plaintiff. (Transcript, p. 248, lines 4-10) To suggest that the court failed to take into consideration the Defendant's continued pain and suffering and need for further medical care is untrue.

The trial court further found that in recent times, namely in December, 1978 the Defendant received \$30,450.00 from Nancy Finch, and an additional \$18,637.80 from Nancy Finch in December, 1979, and that he did not reasonably account for where the money went, nor did the Plaintiff have the use of any of those marital funds. (Findings of Fact,

paragraph 18)

The argument of the Defendant that the judge failed to take into account the Defendant's efforts and expenditures in repairing, improving and protecting the various parcels of property over the eight years subsequent to the initial divorce is likewise without merit. Despite repeated requests for an accounting of these matters by Plaintiff's counsel, the Defendant failed to produce one invoice or other documented piece of evidence to demonstrate any expenditure of time or money of his part in repairing or protecting any of the parcels of property subsequent to the divorce. In fact, the court found that although he was in a position to bring forth such evidence, the Defendant failed to do so. (Transcript, page 253, lines 3-7)

The court further found that there was little or no cooperation from the Defendant in helping to identify marital assets, or bringing to attention to the court of assets which belonged to the marital estate, and that throughout the whole proceedings he "drug his feet." (Transcript, page 252, 3, lines 22-25 and 1-2)

The court is granted considerable latitude in distributing the assets of the marital estate, and there is nothing which requires the trial judge under these

circumstances, to divide any of the assets immediately. In fact, the trial judge was more than equitable; inasmuch as his original intention was in the first decree of divorce was to award the Plaintiff two payments of \$18,744.14 each from the sale of Fenton Ave., and under the present circumstances, the Plaintiff is only entitled to a monthly installment of \$245.00, and her heirs are entitled to a remainder interest in one-half of the balance of any principal at her death. (Conclusions of Law, paragraph 32)

#### ARGUMENT

#### I

#### STANDARD OF REVIEW

In reviewing the findings and judgment of the trial court, after a trial on the merits, this Court must view the evidence in the light most favorable to the Plaintiff, and the judgment must be affirmed if those findings are substantiated by the evidence. Sharpe v. American Medical Systems, Inc., 671 P.2d 185 (Utah, 1983). It is not the Court's duty to retry the facts and this Court must presume

that the trial court's findings are correct and, if they are supported by substantial evidence in the record, those facts should not be overturned. Further, this Court must view the evidence and all inferences that might be reasonably made from the evidence in a light most favorable to the judgment rendered. Hal Taylor Assocs. v. Union American, Inc., 657 P.2d 743 (Utah, 1982). Litho Sales, Inc. v. Cutrubus, 636 P.2d 487 (Utah, 1981).

## II

### THE TRIAL COURT IS GRANTED WIDE DISCRETION TO DISTRIBUTE MARITAL ASSETS.

The trial court is given considerable discretion in adjusting the financial and property interests of the parties. Lee v. Lee, 744 P.2d 1378, 1380 (Utah, 1987); Smith v. Smith, 751 P.2d 1149 (Utah App., 1988).

Such a decision is not to be disturbed on appeal unless it is clearly unjust or an abuse of discretion. Gardner v. Gardner, 748 P.2d 1076, 1978 (Utah, 1988).

The record, and findings of fact and conclusions of this case clearly indicate an attempt on the part of the

trial judge to equitable distribute the remaining marital assets between the parties, and an attempt to award the Plaintiff with enough additional income, in light of the parties' circumstances, to equal that of the Defendant's income. The findings indicate this attempt, hence no reversible error was committed in failing to take into account either assets or the nature and extent of the needs of the parties. Acton v. Deliran, 737 P.2d 996, 999 (Utah, 1987).

In Jones v. Jones, 700 P.2d 1072, 1075 (Utah, 1985) the Utah Supreme Court delineated three factors that the trial court must consider in fixing alimony awards: (1) the financial conditions and needs of the spouse seeking alimony; (2) the ability of the spouse seeking alimony to produce sufficient income; and (3) the ability of the paying spouse to provide support. All three of these factors were considered by the trial court in this case. The trial court found that the Defendant had income of \$605.00 per month while the Plaintiff had income of only \$358.00 per month. The trial court further found that each party was substantially unemployable for all practical purposes. (Transcript, page 248, lines 11-25) The court did find that the Plaintiff did some baby-sitting from time to time, but



the Defendant lived on ground in Fruitland which provided him with an opportunity to raise animals and provide for some of his own basic needs off the land. Since the court felt the need to readjust the alimony award to make it more equitable (Transcript, page 251, lines 8-12), it nevertheless did not wish to increase the amount to be paid by the Defendant directly because he was essentially unemployable, and because of his low income. (Ibid) The increased income, sufficient to reach the income level maintained by the Defendant, was to come from the remainder of the marital assets, namely, the balance of the contract proceeds from the Stratler property, and whatever sums could be generated from the sale or other disposition of the three properties kept hidden by the Defendant until they were brought out by Plaintiff's counsel in trial, the Gregson property, the Bryan Ave. property, and the Claybourne property.

The court was not required to make any provision for future medical needs of the Defendant, since (a) he demonstrated no specific need for future medical care, and (b) a portion of the award for his burns was to have covered future medical needs.

The court found that the Fenton Ave. sale was left

unsecured by the Defendant; hence, there is nothing either party could have done to preserve or protect the Fenton Ave. property when Nancy Finch filed for Chapter 7 bankruptcy. Their claim was left unsecured. The blame for this mismanagement was laid at the feet of the Defendant by the trial judge. (Transcript, page 249, lines 14-17)

### III

#### THE TRIAL COURT DID NOT ERR IN FAILING TO MAKE AN IMMEDIATE DIVISION OF MARITAL ASSETS

Counsel for the Plaintiff relies upon the case of Owens v. Owens, 734 P.2d 414 (Utah, 1986) for the proposition that any division of marital assets must be immediate. In so doing, Counsel misreads the case. In that case the custodial parent was not awarded the family home, and the court found that it was the apparent intention of the parties to make an immediate division of the marital assets, primarily for the benefit of the custodial parent who did not have the benefit of the monies from the sale of the family home. The court found that the custodial parent indicated that she needed the money for the children. Since

the custodial parent was not awarded the home, the court found under those circumstances that a division of the equity should have been immediate.

No such case is presented here. In fact, the trial court is attempting to equitably dispose of the marital assets, but is intentionally making an award of alimony from the marital assets, to insure that the Plaintiff has a stream of income for a period of years to equal the Social Security Income received by the Defendant. (Transcript, page 256, lines 4-14) It is possible, I suppose, that the trial court judge could have awarded the Plaintiff a sum of alimony from the Defendant's assets and then made a division of marital property, but the trial court judge felt that prudence suggested that the funds are best preserved and the interests of the parties are best protected, if no such sum is taken from the Defendant, but said sums come from marital assets preserved to protect both the Plaintiff and the Defendant.

The fact that there may be an immediate disparity in the division of the marital assets is not, in and of itself, grounds for reversal. Westingskow v. Westenskow, 562 P.2d 1256 (Utah, 1977) And where there is a disparity in the education, income or earning potential between the parties,

the court held in Eames v. Eames, 735 P.2d 395 (Utah, 1987) that the husband's claimed right to receive interest in his one-half interest in the home's equity, until the home was sold, was offset by the wife's need to provide shelter and support for the parties' youngest child while the child attended college. The trial court judge in this case recognized the Supreme Court's recent positioning on these matters and noted that women in long-standing marriages, and inequitable situations, are entitled to deference when it comes to immediate distribution of marital assets. (Transcript, page 247, lines 18-25; Findings of Fact, paragraph 11)

It should also be noted that prior to the divorce the Defendant had control over nearly \$50,000.00, while the Plaintiff did not receive any of those funds for her use or benefit. (Transcript, page 253, lines 12-25).

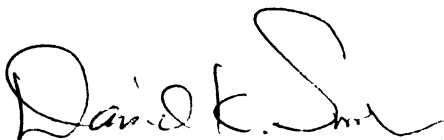
#### CONCLUSION

The trial court judge bent over backwards in light of the Defendant's defiant attitude in hiding assets, and his failure to be forthcoming during discovery and at trial in regards to his "hidden" assets, to reach a fair and

equitable division of marital assets, while at the same time providing for an optimum benefit for alimony on the part of the Plaintiff. He did not take anything away from the Defendant's income to pay to the Plaintiff, but allowed the Plaintiff to manage the marital assets, and to secure to herself so much of the income as would be required to pay her sufficient to equal Defendant's income. Both are living at poverty level; however, Defendant has his own property free and clear, has the ability to raise animals and crops to partially care for his needs. Plaintiff has no such opportunity, and must rent.

The decision of the trial court judge should not be disturbed.

DATED this 10<sup>th</sup> day of July, 1989.

  
\_\_\_\_\_  
DAVID K. SMITH, ESQ.  
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Respondent, postage prepaid, to Roland Uresk and Machele Fitzgerald, counsel for the

Defendant/Appellant, 156 North 200 East, Roosevelt, Utah  
84066 this 10<sup>th</sup> day of July, 1989.

  
\_\_\_\_\_  
DAVID K. SMITH, ESQ.

1 (Plaintiff's Exhibit No. 11 admitted.)

2 THE COURT: Anything else?

3 MR. SMITH: I have nothing further, your  
4 Honor, except maybe a short argument.

5 THE COURT: Do we need the benefit of  
6 the record?

7 MR. SMITH: I don't believe so, your  
8 Honor.

9 THE COURT: Do we?

10 MR. URESK: No.

11 (Argument given.)

12 THE COURT: The Court originally entered  
13 a Decree of Divorce in this matter February 23rd,  
14 1982. In that decree, the Court, specifically in  
15 Paragraph No. 4 -- which I note is interlineated by  
16 the Court, so the Court's intention and understanding  
17 was crystal clear to the Court -- the Court awarded  
18 plaintiff, Mrs. Woodard, two installments due from  
19 Nancy Finch; one in the amount of \$18,744.14 due  
20 December 1, 1981; and \$18,744.44, due December 1,  
21 1982, together with any additional principal and  
22 accruing interest.

23 It was the Court's perception following  
24 a hearing that there was monies due from Mrs. Finch,  
25 and the Court never realized that the property had

1 been deeded out to Mrs. Finch, and that it was not a  
2 secured transaction. Ultimately, after that time, the  
3 Court was -- or at some time, the Court became aware  
4 of a bankruptcy, but the Court didn't understand the  
5 unsecured nature of that transaction.

6                   So, accordingly, the Court subsequently  
7 -- following an appeal to the Supreme Court, the  
8 Supreme Court affirmed the decree as it was entered;  
9 though, as I recall, indicated that the -- there  
10 didn't appear to be any disparity in the award the  
11 property set forth in that order. And I assume the  
12 record reflected the nature of the burn proceeds.

13                   The Court on May 25th, 1984,  
14 notwithstanding the completion of the appeal because  
15 of the fundamental misunderstanding of the record by  
16 the Court, determined to set aside the property  
17 distribution and reconsider the whole case.

18                   The statutes provide that the Court make  
19 an equitable distribution of property and income, and  
20 that's where we start. The Court observes,  
21 particularly in recent months, a number of decisions  
22 that recognize on the part of women, long marriages  
23 and inequitable situations with income, and I think  
24 have broadened what historically the Courts have done  
25 to solve these kinds of problems.



1           The Court finds that Mrs. Woodard at  
2 this date is 73 years of age, and that in 20 days, Mr.  
3 Woodard is 74 years of age.

4           The Court finds that they are both  
5 mentally alert, reasonably fit for their chronological  
6 ages. And even though the Court recognizes that Mr.  
7 Woodard has some ongoing problems with his eyes and  
8 obviously has scarring attendant to his wounds, that  
9 in a functional way, he is no more disabled than is  
10 Mrs. Woodard.

11           The Court finds that Mr. Woodard is on  
12 social security, has income of \$605, give or take a  
13 dollar or two each way.

14           That Mrs. Woodard is on social security,  
15 and including a supplemental income award from social  
16 security of \$165, has \$358 per month.

17           The Court finds that given their ages  
18 and their backgrounds, they are substantially  
19 unemployable for all practical purposes other than the  
20 Court does recognize that Mrs. Woodard does do  
21 baby-sitting from time to time. Mr. Woodard lives in  
22 Fruitland on some ground, which has provided him with  
23 an opportunity to raise animals and provide some of  
24 his own basic needs because of the land.

25           Mr. Woodard received a very serious burn

1 injury on February 28th, 1971, and it's not clear from  
2 this record as to when he received his settlement. I  
3 have various references to somewhere in the range of  
4 72, 73, 74, he received a settlement. And the  
5 evidence seems somewhat clear, though it's with some  
6 doubt in the Court's mind precisely how much he  
7 received, but essentially he received somewhere in the  
8 neighborhood of \$64,000.

9           The Court finds that there has been  
10 imprudent management of marital assets as well as his  
11 property; namely, one investment being made in Century  
12 Mortgage in the amount of \$20,000, which was lost.

13           The real estate closing with Mrs. Finch  
14 was certainly not done in a reasonably prudent  
15 fashion, resulting in apparent losses of an unknown  
16 amount as a result of the transaction with Mrs.  
17 Finch.

18           In addition, transactions which are  
19 asserted by Mr. Woodard to have been made with Mr.  
20 Evans do not appear to have been managed in a  
21 reasonable business like manner.

22           Mr. Woodard was somewhere between the  
23 ages of 57 to 58, 59, when he received his settlement,  
24 that of approximately \$64,000. He has not since that  
25 time been gainfully employed in any substantial,

1 regular, gainful employment.

2                   It is apparent that at least a portion  
3 of that settlement was justified as a result of loss  
4 of future earnings; though, the Court does not have  
5 any foundational evidence to make any sort of  
6 reasonable estimate of what was attributable to that.  
7 I simply recognize that the Court -- the Appellate  
8 Courts of this State have indicated that the portion  
9 of personal injury awards attributable to loss of  
10 future earnings is appropriately considered by the  
11 Court as a marital asset.

12                   As near as the Court can tell, 26,  
13 27,000, or some reasonable close approximation  
14 thereof, was used by Mr. Woodard to acquire the  
15 Fruitland, Utah, acreage. I can't recall the specific  
16 acreage. It's described -- the property is described  
17 with specificity in the original findings' legal  
18 description.

19                   He acquired a used trailer that's  
20 there. He had a well drilled that was there; which  
21 are utilized. Given the loss on the Century Mortgage,  
22 given the loss on the transaction with Mrs. Finch and  
23 considering the reasonable and rational conclusion  
24 that part of the 64,000 was for loss of future  
25 earnings, it appears that it would be reasonable under

1 the circumstances to recognize the Fruitland property  
2 trailer house, goat, well and any water rights  
3 attendant or in connection therewith to be property  
4 that he acquired through his burn accident, and would  
5 be a reasonable approximation of personal injuries  
6 which he received, and therefore ought to be awarded  
7 to him. And are so awarded to him.

8           The original decree awarded one dollar  
9 for your alimony, and although that's not property  
10 settlement, per se -- the Court is going to modify the  
11 alimony award -- but Mr. Woodard may continue with a  
12 dollar per year alimony.

13           Paragraph 7 of the award in the original  
14 decree awarded personal property accumulated by the  
15 parties during their marriage awarded to each of those  
16 items in their possession, except the plaintiff was  
17 awarded the sewing machine. That provision may stand,  
18 and may be repeated in this order.

19           Paragraph 8 provided that Lot No. Med  
20 274-A, Lots 3 and 4 of Memorial Estates, were awarded  
21 to plaintiff. Any remaining lots were awarded to  
22 defendant. Each was awarded their casket. And that  
23 provision may remain the same.

24           This order may reflect a mutual  
25 restraining order against either contacting,

1 harassing, cursing, reviling and all that's gone on  
2 for a number of years.

3           The monies in the clerks office may be  
4 maintained there in an interest bearing basis, or,  
5 alternatively, may be placed by plaintiff in an  
6 interest bearing account in a federally insured  
7 account. And plaintiff has the right to liquidate 329  
8 East Bryan Avenue, 219 East Gregson Avenue, 255 East  
9 Claybourne; realizing the maximum amounts that can be  
10 realized therefrom. Net of any reasonably  
11 demonstrable claims against those properties. And I  
12 don't have a good enough record to satisfy that, and  
13 Mrs. Evans is not a party. You are going to have to  
14 plow those issues, but Mrs. Woodard will be given the  
15 power, at least, to liquidate those amounts.

16           Any net proceeds recognizing any other  
17 outstanding claims that may be reasonably demonstrated  
18 against them are to go in the same -- either to the  
19 clerk of the court or to a federally insured account  
20 to be held for the purpose of making the following  
21 monthly -- the following distributions:

22           The Court finds that there was little or  
23 no cooperation from Mr. Woodard in coming forward to  
24 identify marital assets or to provide documents or to  
25 help bring to the Court's attention assets of the

1 marital estate, and that throughout the proceedings,  
2 he has essentially drug his feet.

3 He was in a position, it appears to the  
4 Court, to have brought forward documents that would  
5 have identified the assets, identified those who had  
6 claims against the property, where payments were made,  
7 the amounts and has failed to do so.

8 The Court also recognizes that there's  
9 no demonstrated ability on his part to pay any of his  
10 attorney's fees.

11 The Court also makes the additional  
12 finding that of recent times, namely in December of  
13 1978, Mr. Woodard received \$30,450 from Nancy Finch,  
14 and has not made reasonable explanation of where that  
15 money went. In addition, in December of 1979, he  
16 received an additional \$18,637.80 from Mrs. Finch, and  
17 he has not reasonably accounted for where that money  
18 went.

19 The Court finds that specifically Mrs.  
20 Woodard has not received any of those funds for her  
21 use other than the Court did enter a temporary order  
22 in this matter as far back as February '80, ordering  
23 him to pay her \$300 per month. And I assume based  
24 upon receipt of monthly payments on the contract with  
25 the Stewarts and arrearages that were recognized by

1 the Court in interim orders, that she has essentially  
2 received what she was supposed to have received under  
3 the various orders of the Court.

4 From the monies held with the clerk of  
5 the court, \$3,000 may be paid to Mr. Smith; \$1,000 to  
6 Mr. Uresk.

7 And other than that, Mr. Smith, I don't  
8 know whether you've got little kids. I assume you  
9 do. She'll work out services with baby-sitting  
10 still. If you don't overtax her. Maybe in a real  
11 pinch she will agree to scrub floors. But other than  
12 that, I think you are going to be hard pressed to  
13 collect all of that.

14 She may have costs as are usually taxed,  
15 but the Court's perception of those are the filing  
16 fee, subpoena costs and things like that. And  
17 generally most of the others aren't awardable. But  
18 you can file your memorandum of costs and  
19 disbursements, and the Court would look at that.

20 Other than those amounts, the Court  
21 orders that the funds can be turned over for her  
22 management. If it's turned over for her management,  
23 then she is to provide an annual accounting to Mr.  
24 Woodard. If it stays with the clerk of the court,  
25 then I assume the clerk would have an accounting.

1                   Owing to the imprecision of the award of  
2 social security, I'll just simply round off the  
3 monthly award. Mrs. Woodard is to receive \$205 per  
4 month payable from that fund as alimony until the  
5 funds are exhausted. If that award destroys the  
6 supplemental award, then the monthly amount payable  
7 from that fund may be increased to offset the  
8 supplemental award, so that their monthly incomes are  
9 substantially equal.

10                   And those funds shall be held intact and  
11 not be otherwise disbursed without further order of  
12 the Court.

13                   Mrs. Woodard is awarded the 1980 LTD.  
14 Mr. Woodard is awarded the 1978, or '77, whatever it  
15 was, Pinto.

16                   Have I missed anything?

17                   MR. SMITH: Your Honor, I just have one  
18 question. I don't know if it -- excuse me, everybody  
19 for asking these questions -- but assuming that --  
20 assuming that Mrs. Woodard died and Mr. Woodard is  
21 alive and those funds are still intact, what happens  
22 to those? Do those become part of her estate, or are  
23 those part of Mr. Woodard's.

24                   THE COURT: The Court will decide that  
25 issue when and if it needs to. My estimate, just



1 looking at Mrs. Woodard, is that she's a pretty tough  
2 cookie, and she's got a number of years, and the fund  
3 is going to give way sooner than she expires.

4 But I understand that's unknown. And  
5 because of the disparity in income, I don't see how to  
6 protect, given Mr. Woodard's past unwillingness to  
7 cooperate, to be open and frank with her, the Court or  
8 anyone else, how those interests can be protected.  
9 And the only fair way to see that she has reasonable  
10 -- they are still under the poverty level, both of  
11 them. But at least it gives her some income stream,  
12 and it assures the payment for a number of years. I  
13 think the choice is that the Court ought to leave them  
14 intact.

15 I suppose, if either of them can  
16 demonstrate a need for surgery or health needs that's  
17 justified, the Court would then consider those  
18 petitions and determine whether or not any of those  
19 funds can be taken to meet those needs for either of  
20 them.

21 I suppose if my inclination is, although  
22 I don't see the need for making an order, if she dies  
23 before he does, then I suppose at that point, they can  
24 be divided half even. His half. And her half ought  
25 to go to the kids. I guess that we can put that in

1 there. There is no violence that that would do. But  
2 I didn't want to award them particularly to either,  
3 other than to keep them as a secure fund to assure the  
4 annuity payment to her of basically alimony until her  
5 death, and that's the only way I see that I can really  
6 effectively do that.

7 MR. SMITH: Okay.

8 THE COURT: I suppose you could go ahead  
9 and put that in there. If she predeceases him and  
10 there's no longer a monthly amount due her and there's  
11 still funds remaining, then he may have half the  
12 remaining funds, and the other remaining half may go  
13 to her heirs, or may go to whoever she appoints by  
14 will or power of appointment. Their heirs are  
15 essentially the same people. They are adult  
16 children. If she outlived him and she died intestate,  
17 they would go to their children. So I think just the  
18 one other alternative is sufficient.

19 Anything else?

20 MR. SMITH: No, your Honor.

21 THE COURT: Can you draft a reasonably  
22 intelligent order from what I've said?

23 MR. SMITH: I believe I can, your Honor.

24 THE COURT: Since you got the big fee,  
25 you get to do it, Mr. Smith.

FILED

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

FEB 23 3 23 PM '82

RICHARD K. CRANDALL  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Plaintiff  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: 521-9000

W. STERN, CLERK  
CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

BL. 169 NO. 944  
2-25-82 - 9:35 AM.

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

OLIVE M. WOODARD,

Plaintiff,

DECREE OF DIVORCE

vs.

KARL WOODARD

Civil No. D-79-1766

Defendant.

The above entitled Court having jurisdiction over the subject matter and of and the the parties to this action and having heretofore made and entered its findings of fact and conclusions of law, now in accordance therewith

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff and Defendant are each awarded a decree of divorce dissolving the bonds of matrimony heretofore existing between the parties the same to become final upon entry.

2. Each party is hereby awarded One Dollar (\$1.00) per year as alimony.

3. The plaintiff is awarded as her sole separate property any interest the parties may have in the real property located at 336, 340 and 342 Fenton Avenue, Salt Lake City, Utah the legal descriptions of which are:

BEGINNING at a point on the South line of a 50 feet road said point being North 0°17'45" East 262.15 feet and East 250.5 feet from the Southwest corner of Lot 3, Block 18, Ten Acre Plat "A", Big Field

Survey, and running thence East 59 feet along the said South line; thence South 0°17'45" West 262.19 feet to the South line of said Lot 3; thence North 89°59'30" West 59 feet along said South line; thence North 0°17'45" East 262.18 feet to the place of BEGINNING

BEGINNING at a point on the Southline of a 50 foot road, said point being North 0°17'45" East 262.15 feet and East 309.5 feet from the Southwest corner of Lot 3, Block 18, Ten Acre Plat "A", Big Field Survey, and running thence East 59 feet along the Southline of road; thence South 0°17'45" West 262.20 feet to the south line of said Lot 3; thence North 89°59'30" West 59.0 feet along said South line; thence North 0°17'45" East 262.19 feet to the place of BEGINNING.

BEGINNING at a point on the South line of a 50 foot road, being North 0°17'45" East 262.15 feet and East 368.5 feet from the Southwest corner of Lot 3, Block 18, Ten Acre Plat "A", Big Field Survey, and running thence East 59 feet along said South line; thence South 0°17'45" West 262.21 feet to the South line of Lot 3 aforesaid; thence North 89°59'30" West 59 feet along said South line; thence North 0°17'45" East 262.2 feet, more or less, to the point of BEGINNING.

4. Plaintiff is awarded all of defendant's interest in all monies due the defendant from one Nancy Finch, as a result of the sale of the Fenton Way properties and may immediately proceed in her own name to collect the monies due the defendant from Nancy Finch <sup>in the amount of \$18,744.14 due December 1, 1981 and \$18,744.14 due December 1, 1982, and all principal and</sup> ~~which the court has found to be approximately \$56,232.42 plus interest.~~ <sup>interest accruing thereafter.</sup>

5. The thirty (30) acres of unimproved ground located in Fruitland, Utah and described as follows:

Lots 55, 56 and 57  
Plat 6, Section 20  
T. 3 South, Range 8 West  
Salt Lake Base Meridian

are awarded to the Defendant as his sole and separate property.

6. The amount of Three Hundred Eighty Six Dollars and Eighty Seven Cents (\$386.87) being paid monthly from the sale of the real property located at 59 Stratford Avenue, Salt Lake City, Utah is awarded to the Plaintiff until the Three Hundred Dollars (\$300.00) per month as and for temporary

KR-  
the June 17, 1981  
support as ordered by the Court in this cause has been paid in full together with Plaintiff's attorney's fees in the sum of One Thousand Five Hundred Dollars (\$1,500.00) and her costs of court have been paid in full, thereafter, the proceeds of the sale of said real property shall be divided equally between the Plaintiff and the Defendant.

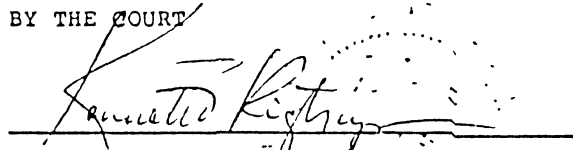
7. The personal property accumulated by the parties during their marriage is hereby awarded to the person having the possession of each item and, in addition, Plaintiff is hereby awarded her sewing machine.

8. Lot No. Med 274A Lot 3 & 4 of the Memorial Estates Cemetery is hereby awarded to the Plaintiff and the parties remaining unoccupied lots at the Memorial Estates cemetery are hereby awarded to the Defendant. The Plaintiff and Defendant are each awarded one of the two caskets purchased with the cemetery lots.

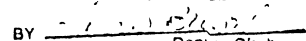
9. Plaintiff and defendant are both ordered to not contact in any way the other, either in person or by telephone, and are not to come upon the premises where the other person may be located nor is either party, in any manner, to bother or in any way interfere with the other party.

DATED at Salt Lake City, Utah this 23<sup>48</sup> day of ~~January~~<sup>February</sup>, 1982.

BY THE COURT

  
Kenneth Rigtrup  
District Judge

ATTEST  
W STERLING EVANS  
CLERK

BY   
Deputy Clerk

Approved as to form:

\_\_\_\_\_  
Thomas R. Blonquist

DAVID K. SMITH, ESQ.  
Attorney for Plaintiff  
445 East 4500 South, Suite 200  
Salt Lake City, Utah 84107  
Telephone: 261-3459

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

MAY 25 1984

H Dixon Hindley, Clerk 3rd Dist Court  
By [Signature]  
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

OLIVE M. WOODARD, )

Plaintiff, )

vs. )

O R D E R

KARL WOODARD, )

Civil No. D-79-1766

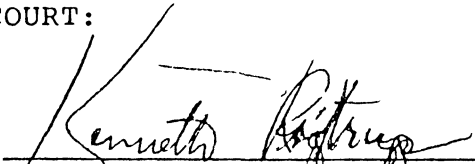
Defendant, )

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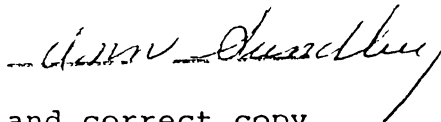
Plaintiffs Motion for Vacation of the property distribution portion of the Divorce Decree came on hearing before the Honorable Kenneth Riggall, District Court Judge, on Monday, May 14, 1984 at the hour of 2:00 P.M., and the Plaintiff having appeared by and through her counsel David K. Smith, and the Defendant having appeared by and through his counsel, Jane Allen, and the court having heard the Motion of Jane Allen to be permitted to withdraw as counsel for the Defendant and the court having granted said Motion, and the parties having thereafter argued their respective causes, the court in good cause appearing, DOES NOW HEREBY order that the property distribution portion of the Decree of Divorce entered by the above court be and is the same hereby vacated, <sup>KR</sup> based upon the ground that the property distribution portion of the Divorce Decree of February 23, 1982 was grounded upon a misapprehension of fact that the Fenton Ave property was sold to Nancy French with a reserved security interest when, in fact, it had been deed out in

DATED this <sup>25</sup>25 day of May, 1984.

BY THE COURT:


  
HONORABLE KENNETH RISTRUP  
District Court Judge

MAILING CERTIFICATE :



I hereby certify that I mailed a true and correct copy  
of the foregoing Order this 22nd day of May, 1984 to the  
following:

Mr. Karl Woodard  
P.O. Box 733  
Fruitland, Utah 84027

  
Sec/D.K.S

DAVID K. SMITH, ESQ.  
State Bar No. 2993  
Attorney for Plaintiff  
OLIVE M. WOODARD  
Suite 300  
6925 Union Park Center  
Midvale, Utah 84047  
Telephone: 566-3373

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

|                   |   |                           |
|-------------------|---|---------------------------|
| OLIVE M. WOODARD, | ) |                           |
| Plaintiff,        | ) |                           |
|                   | ) | FINDINGS OF FACT AND      |
|                   | ) | CONCLUSIONS OF LAW        |
|                   | ) | Civil No. D-79-1766       |
| KARL WOODARD,     | ) | Honorable Kenneth Rigtrup |
|                   | ) |                           |
| Defendant.        | ) |                           |
|                   | ) |                           |

---

The above-entitled matter came on regularly for a non-jury trial on Friday, September 23, 1988 at 9:00 a.m. before the Honorable Kenneth Rigtrup, Third District Court Judge, and the Plaintiff having been personally present and having been represented by her counsel, DAVID K. SMITH, ESQ., and the Defendant having also been personally present and having been represented by his counsel, ROLAND URESK,



ESQ., and the various parties having been placed under oath, and having testified concerning the type, location and disposition of certain their assets, and various items of real evidence having been offered and introduced, and the court having heard the oral arguments of the counsel for the parties, and being fully advised in the premises, does now make the following:

#### FINDINGS OF FACT

1. The Plaintiff, OLIVE M. WOODARD, and the Defendant, KARL WOODARD, were married to one another on August 1, 1933 at Duchesne, Utah, and remained married to one another until the Decree of Divorce was entered in this matter on or about February 23, 1982. The court further notes that these parties were married to one another for nearly 49 years.

2. The Court notes that paragraph four of the original Decree of Divorce provided as follows:

"Plaintiff is awarded all of defendant's interest in all monies due the defendant from one Nancy L. Finch, as a result of the sale of the Fenton Way properties and may immediately proceed in her own name to collect the monies due the defendant, from Nancy Finch in the amount of \$18,744.13 due December 1, 1981 and \$18,744.14 due December 1, 1982, and all principal and interest accruing thereafter."

3. The meaning of that particular paragraph is clear in the court's mind, inasmuch as the court corrected a

portion of the paragraph by interlineation. It was the court's intention that Mrs. Woodard be awarded two of the three annual installments to be paid by Mrs. Finch, each in the amount of \$18,744.14 plus interest. Although the court subsequently heard that Mrs. Finch had filed for protection under the bankruptcy act, at that time the court did not realize that the payments were unsecured; the court believed that the payments were secured by a mortgage or trust deed in the Fenton Ave. properties.

4. It was for this reason that the court entered an order on May 25, 1984 following a hearing on May 14, 1984, voiding the property division between the parties. The court felt that the property distribution portion of the Decree of Divorce was grounded upon a misapprehension of the fact that the Fenton Avenue properties were sold to Nancy L. Finch with a reserved security interest, when, in fact, the property had been deeded outright to her, without any reservation of a security interest back in the Fenton Avenue property, and the note given by Nancy L. Finch was unsecured.

5. The court finds that the Plaintiff, OLIVE M. WOODARD is 73 years of age and that in 20 days the Defendant, KARL WOODARD, will be 74 years of age. The court finds that both parties appear to be mentally alert and reasonably active for their chronological ages, and this despite the fact that the Defendant, KARL WOODARD, suffered a severe burn accident in 1971.

6. The court finds that the Plaintiff, OLIVE M. WOODARD, receives \$193.00 per month in Social Security Benefits and receives a supplemental SSI benefit of \$165.00, for a total monthly benefit of \$358.00. She has no other source of income, other than occasional babysitting monies.

7. The court finds that the Defendant, KARL WOODARD, receives \$605.00 per month in Social Security Benefits.

8. The court finds that given their respective ages and backgrounds, both parties are substantially unemployable.

9. The court finds that the Defendant, KARL WOODARD, lives in Fruitland, Utah, and lives on a 30 acre parcel of property in a trailer, all of which is unencumbered, and raises a milk goat, and has the capacity to raise a garden if he so wishes to assist him in providing for his needs.

10. The Plaintiff, OLIVE M. WOODARD, resides in a two-bedroom apartment in Salt Lake City, Utah, for which she pays \$250.00 per month, plus gas, electric and telephone.

11. The court takes notice that the Statutes regarding divorce and in particular recent case law handed down from the Utah Court of Appeals, which allows this court to make an equitable distribution of any marital property of the parties to a divorce, and this is particularly the case in long standing marriages.

12. The court also notes that recent decisions from

the Utah Court of Appeals have determined that personal injury awards representing sums for loss of future income are considered a marital asset subject to distribution between the parties.

13. The court finds that the Defendant, KARL WOODARD, was involved in a very serious burn accident injury on or about February 28, 1971 in Roosevelt, Utah. He subsequently brought a lawsuit against several parties, and received a net settlement to him of approximately \$64,000.00 sometime between 1972 and 1974. Given his age at the time of the accident of 58 years, and the fact that he was unable to engage in any type of physical employment following the accident, the court finds that a portion of the settlement was undoubtedly intended as reimbursement for loss of future income. The precise amount which was intended as reimbursement for loss of future income is unknown.

14. The court finds that KARL WOODARD used approximately \$35,500.00 of the monies received from his burn case to purchase and remodel the home located at 5941 and 5947 Stratler Ave., Murray, Utah 84107, in approximately 1973; however, these sums are considered by the court to be monies for loss of future income, and thus subject to an equitable distribution between the parties by the court. The court notes that the Defendant received the \$12,000 down payment and several of the monthly installments without making an accounting thereof to the Plaintiff.

15. The court finds that in February, 1980 the court

ordered the Defendant, KARL WOODARD, to pay the Plaintiff, OLIVE M. WOODARD, the sum of \$300.00 as and for temporary alimony and support and that she received funds derived from the sale of the Stratler Ave. property for approximately two years following the entry of the Decree of Divorce pursuant to an Order of this court and was paid the sums ordered by this court to be paid her by the Defendant.

16. The court finds that KARL WOODARD used approximately \$26,000.00 of his monies secured from the settlement on his burn accident case to aquire the 30 acre parcel of land on which he now resides in Fruitland, Utah, and to move a used trailer onto the property, and to drill a well on the property. Given the amount received from his settlement on his burn case, and taking into consideration a reasonable and rational amount for pain and suffering, the court finds that the monies obtained from the accident case used to purchase the Fruitland properties, together with the trailer and well, and other improvements thereon, represent his personal asset and are reasonably related to monies he received for pain and suffering he received from the settlement of his burn case.

17. The court finds that the Defendant, KARL WOODARD, has engaged in imprudent management of his assets over the years. In particular, the court notes that KARL WOODARD invested \$20,000.00 in the mid-1970's into a venture with Century Mortgage, and all of those funds were lost; furthermore, he sold the Fenton Avenue properties without

securing the balance due from Mrs. Nancy L. Finch, \_\_\_\_\_, in a loss of an unknown sum, and more recently secured various loans from a Robert Evans which do not appear to have been secured in a business-like manner.

18. The court finds in recent times that the Defendant, KARL WOODARD, received \$30,450.00 from Nancy L. Finch as the down payment on the sale of the Fenton Ave. properties, and that in February 22, 1979 he received another \$18,744.14, representing the first annual installment of three to become due from Nancy L. Finch. The court finds that he has not adequately accounted for the use of said funds, and that the Plaintiff, OLIVE WOODARD, did not have the use of any of those funds.

19. The court specifically finds that the Defendant has offered little, if any, assistance to the Plaintiff in locating marital assets in connection with this action, and further finds that he had unnecessarily dragged this matter on, requiring the Plaintiff and/or her counsel to independently locate assets, which has both frustrated the Plaintiff and this court. Accordingly, this court should enter an order requiring the Defendant to contribute to the Plaintiff's legal fees and costs incurred in this action.

20. On the other hand, this court finds that both parties' incomes, coupled with their expenses, would suggest they are living below poverty level, and have little independent resources with which to pay court costs and/or legal fees.

### CONCLUSIONS OF LAW

21. Paragraph two of the original decree of divorce provided that each party was awarded \$1.00 per year as and for alimony from the other, and this provision should not be altered, but should remain in full force and effect.

22. Paragraph seven of the original decree of divorce provided that the personal property accumulated by the parties during their marriage should be awarded to the person having the possession thereof at the time the decree was entered, and also that the Plaintiff, OLIVE WOODARD, was awarded her sewing machine. This paragraph should remain in full force and effect.

23. The Plaintiff should further be awarded her 1980 Ford LTD as her sole and separate property.

24. The Defendant should further be awarded his Pinto automobile as his sole and separate property.

25. Paragraph eight of the original decree of divorce provided that Lot No. Med 2754A , Lot 3 & 4 of the Memorial Estates Cemetery should be awarded to the Plaintiff, OLIVE WOODARD, and the parties' remaining unoccupied lots at Memorial Estates Cemetery should be awarded to the Defendant, KARL WOODARD. It further provided that the Plaintiff and the Defendant were each awarded one of the two caskets purchased with the cemetery lots. This paragraph should remain in full force and effect.

divorce provided that both the Plaintiff and the Defendant were ordered restrained from contacting the other, either in person or by telephone, or in any other way, and were not to come upon the premises where the other person may be located or reside, or in any manner from bothering or interfering with the person or property of the other. This paragraph should remain in full force and effect.

27. The Defendant, KARL WOODARD, should be awarded as his sole and separate property, all right, title and interest in and to the following property:

Three ten acre parcels of land designated by the Duchesne County Recorder's Office as Serial Nos. OMT-0006-0056, OMT-0006-0055, and OMT-0006-0057, and designated as Lots 55, 56, and 57, Plat 6, Section 20, Township 3 South, Range 8 West, Salt Lake Base and Meridian, together with any and all improvements thereon, and all personal property attached thereto.

28. The court should award to the Plaintiff, OLIVE M. WOODARD, subject to certain restrictions and conditions set forth hereafter, the following assets:

(A) All funds presently held by the Clerk's Office, which when originally deposited, came to \$20,667.96, and which represented the remaining net proceeds from the sale of the parties' property on 5941 and 5947 Stratler, Murray, Utah 84107.

(B) All right, title, and interest in the property located at 329 East Bryan Ave., Salt Lake City, Utah 84115, subject to any liens or encumbrances of record. This



includes the right to lease the property and collect rents thereon, and/or to sell said property.

The property's legal description is: The West 4 1/2 feet of Lot 21, all of Lot 22, and the East 1/2 Lot of Lot 23, Block 2, WATERLOO ADDITION, according to the official plat thereof, as recorded in the office of the County Recorder, State of Utah.

(C) All right, title and interest in the property located at 219 Easty Gregson Ave., Salt Lake City, Utah 84115, subject to any liens or encumbrances of record. This includes the right to lease the property, to collect the rents therefrom, and/or to sell the property.

The property's legal description is: Beginning at the Northeast corner of Lot 2, MILL CREEK GARDENS ADDITION, and running thence West 10.55 feet Sjouth 50 feet; thence West 39.45 feet; thence South 95.55 feet, more or less, to the Northerly line of 3000 South Street; thence Southeasterly following the curve to the Northerly line of 3000 South Street; to the Southeast corner of said Lot 2; thence North 150.39 feet to the point of beginning. Together with and subject to a right of way over the following: Beginning 50 feet South and 50.55 feet East of the Northwest corner of Lot 1, said MILL CREDD GARDENS ADDITION; and running thence East 10 feet; thence South 95.55 feet to the Southeast corner of said lot 1; thence Northeasterly following the curve of 3000 South Street 10 feet, more or less, to a point following the jcurve of 3000 Sjouth Street 10 feet, more or less, to a point due south of the point of beginning; thence North to the place of Beginning. Being the East 10 feet of the South 95 feet, more or less, to said Lot 1.

(D) All right, title and interest in and to the second trust deed note dated April 26, 1982 for \$29,465.67 from Douglas A. Miller, Kenneth R. Edwards, Steven E.

deed interest in and to property situated at 255 East Claybourne Ave., Salt Lake City, Utah 84117, together with all rights to any payments received therefrom, and all security interests in the property described as follows:

The East 1/2 of Lot 8, Block 2, CENTRAL PARK PLAT "A", according to the official plat thereof, recorded in Block II of Plats at Page 144, records of Salt Lake County, Utah.

Also: Beginning at the Southeast Corner of Lot 7, Block 2, Central Park Plat "A", and running thence North 121 feet; thence West 32 feet; thence South 10 feet; thence West 10 feet; thence South 111 feet; thence East 42 feet, to the point of beginning. Subject to a Deed of Trust in favor of Deseret Federal Savings and Loan Association, a corporation organized and existing under the laws of the United States of America, dated April 19, 1979 in the original principal sum of \$58,850.00.

29. The Plaintiff, OLIVE WOODARD, may either place the proceeds from said lease or sale of said parcels with the Clerk of this Court in an interest bearing account, or she may place said proceeds in a federally insured institution of her choice, provided she gives the Defendant, KARL WOODARD, and annual accounting with respect to the distributions made from said account.

30. The Plaintiff, OLIVE WOODARD, shall be entitled to manage said funds subject to the provisions of paragraph thirty below.

31. The Plaintiff's Counsel, DAVID K. SMITH, shall be entitled to withdraw from the proceeds now on deposit with the Clerk of the Court \$3,000.00 towards his attorney's

fees, together with such actual costs as may be awarded by the Court, and the Defendant's Counsel, ROLAND URESK, shall be entitled to withdraw from the proceeds now on deposit with the Clerk of the Court \$1,000.00 towards his attorney's fees.

32. The Plaintiff, OLIVE WOODARD, shall be entitled to withdraw from said funds on deposit no more than \$245.00 per month for so long as the funds permit; however, should her supplemental Social Security Benefits of \$165.00 be diminished, she may increase the amount of the monthly withdrawal by the amount her supplemental Social Security Benefits are decreased per month.

33. Should the Plaintiff predecease the Defendant, and there remain undistributed funds or interest, then one-half of the undisposed funds at her death should revert to the estate, heirs or assigns of the Plaintiff, and one-half of the undisposed funds should revert to the Defendant or his designees, heirs or assigns.

DATED this \_\_\_\_ day of September, 1988.

BY THE COURT:

---

KENNETH RIGTRUP  
Third District Court Judge

Approved as to Form:

\_\_\_\_\_  
ROLAND URESK, ESQ.  
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following Counsel for the Defendant this \_\_\_\_ day of September, 1988:

ROLAND URESK, ESQ.  
Attorney at Law  
Zions Bank Building  
156 North 200 East  
Roosevelt, Utah 84066

\_\_\_\_\_  
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NOV 11 1988

BY *David K. Smith*  
Attorney for Plaintiff

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

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|                   |   |                           |
|-------------------|---|---------------------------|
| OLIVE M. WOODARD, | ) |                           |
| Plaintiff,        | ) |                           |
|                   | ) | JUDGMENT                  |
|                   | ) |                           |
|                   | ) | Civil No. D-79-1766       |
| KARL WOODARD,     | ) | Honorable Kenneth Rigtrup |
|                   | ) |                           |
| Defendant.        | ) |                           |
|                   | ) |                           |

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BASED UPON the Findings of Fact and Conclusions of  
Law heretofore entered in the above captioned matter

1. Paragraph two of the original decree of divorce  
which provided that each party was awarded \$1.00 per year as  
and for alimony from the other, and this provision is not  
altered, but shall remain in full force and effect.

2. Paragraph seven of the original decree of

accumulated by the parties during their marriage should be awarded to the person having the possession thereof at the time the decree was entered, and also that the Plaintiff, OLIVE WOODARD, was awarded her sewing maching, shall remain in full force and effect.

3. The Plaintiff is further awarded her 1980 Ford LTD as her sole and separate property.

4. The Defendant is awarded his Pinto automobile as his sole and separate property.

5. Paragraph eight of the original decree of divorce provided that Lot No. Med 2754A , Lot 3 & 4 of the Memorial Estates' Cemetery should be awarded to the Plaintiff, OLIVE WOODARD, and the parties' remaining unoccupied lots at Memorial Estates Cemetery should be awarded to the Defendant, KARL WOODARD. It further provided that the Plaintiff and the Defendant were each awarded one of the two caskets purchased with the cemetery lots. This paragraph shall remain in full force and effect.

6. Paragraph nine of the original decree of divorce provided that both the Plaintiff and the Defendant were ordered restrained from contacting the other, either in person or by telephone, or in any other way, and were not to come upon the premises where the other person may be located or reside, or in any manner from bothering or interfering with the person or property of the other. This paragraph shall remain in full force and effect.

7. The Defendant, KARL WOODARD, shall be awarded as his sole and separate property, all right, title and interest in and to the following property:

Three ten acre parcels of land designated by the Duchesne County Recorder's Office as Serial Nos. OMT-0006-0056, OMT-0006-0055, and OMT-0006-0057, and designated as Lots 55, 56, and 57, Plat 6, Section 20, Township 3 South, Range 8 West, Salt Lake Base and Meridian, together with any and all improvements thereon, and all personal property attached thereto.

8. The court awards <sup>K.R. for the benefit of</sup> ~~to~~ the Plaintiff, OLIVE M. WOODARD, subject to certain restrictions and conditions set forth hereafter, the following assets:

(A) All funds presently held by the Clerk's Office, which when originally deposited, came to \$20,667.96, and which represented the remaining net proceeds from the sale of the parties' property on 5941 and 5947 Stratler, Murray, Utah 84107.

(B) All right, title, and interest in the property located at 329 East Bryan Ave., Salt Lake City, Utah 84115, subject to any liens or encumbrances of record. This includes the right to lease the property and collect rents thereon, and/or to sell said property.

The property's legal description is: The West 4 1/2 feet of Lot 21, all of Lot 22, and the East 1/2 Lot of Lot 23, Block 2, WATERLOO ADDITION, according to the official plat thereof, as recorded in the office of the County Recorder, State of Utah.

(C) All right, title and interest in the property

located at 219 Easty Gregson Ave., Salt Lake City, Utah 84115, subject to any liens or encumbrances of record. This includes the right to lease the property, to collect the rents therefrom, and/or to sell the property.

The property's legal description is: Beginning at the Northeast corner of Lot 2, MILL CREEK GARDENS ADDITION, and running thence West 10.55 feet South 50 feet; thence West 39.45 feet; thence South 95.55 feet, more or less, to the Northerly line of 3000 South Street; thence Southeasterly following the curve to the Northerly line of 3000 South Street; to the Southeast corner of said Lot 2; thence North 150.39 feet to the point of beginning. Together with and subject to a right of way over the following: Beginning 50 feet South and 50.55 feet East of the Northwest corner of Lot 1, said MILL CREDD GARDENS ADDITION; and running thence East 10 feet; thence South 95.55 feet to the Southeast corner of said lot 1; thence Northeasterly following the curve of 3000 South Street 10 feet, more or less, to a point following the curve of 3000 South Street 10 feet, more or less, to a point due south of the point of beginning; thence North to the place of Beginning. Being the East 10 feet of the South 95 feet, more or less, to said Lot 1.

(D) All right, title and interest in and to the second trust deed note dated April 26, 1982 for \$29,465.67 from Douglas A. Miller, Kenneth R. Edwards, Steven E. Culligan and Larry D. Welch, given to secure a second trust deed interest in and to property situated at 255 East Claybourne Ave., Salt Lake City, Utah 84117, together with all rights to any payments received therefrom, and all security interests in the property described as follows:

The East 1/2 of Lot 8, Block 2, CENTRAL PARK PLAT "A", according to the official plat



thereof, recorded in Block II of Plats at Page 144, records of Salt Lake County, Utah.

Also: Beginning at the Southeast Corner of Lot 7, Block 2, Central Park Plat "A", and running thence North 121 feet; thence West 32 feet; thence South 10 feet; thence West 10 feet; thence South 111 feet; thence East 42 feet, to the point of beginning. Subject to a Deed of Trust in favor of Deseret Federal Savings and Loan Association, a corporation organized and existing under the laws of the United States of America, dated April 19, 1979 in the original principal sum of \$58,850.00.

9. The Plaintiff, OLIVE WOODARD, may either place the proceeds from said lease or sale of said parcels with the Clerk of this Court in an interest bearing account, or she may place said proceeds in a federally insured institution of her choice, *K.R. Together with the balance of the undisbursed funds held by* provided she gives the Defendant, *Clerk of the Court,* KARL WOODARD, and annual accounting with respect to the distributions made from said account.

10. The Plaintiff, OLIVE WOODARD, is entitled to manage said funds subject to the provisions of paragraph *K.R. and paragraph Thirteen* twelve below.

11. The Plaintiff's Counsel, DAVID K. SMITH, is entitled to withdraw from the proceeds now on deposit with the Clerk of the Court \$3,000.00 towards his attorney's fees, together with such actual costs as may be awarded by the Court, and the Defendant's Counsel, ROLAND URESK, is entitled to withdraw from the proceeds now on deposit with the Clerk of the Court \$1,000.00 towards his attorney's fees.

12. The Plaintiff, OLIVE WOODARD, shall be entitled to withdraw from said funds on deposit no more than \$245.00

per month for so long as the funds permit; however, should her supplemental Social Security Benefits of \$165.00 be diminished, she may increase the amount of the monthly withdrawal by the amount her supplemental Social Security Benefits are decreased per month.

13. Should the Plaintiff predecease the Defendant, <sup>K.R. or any of the assets described above,</sup> and there remain undistributed funds or interest, <sup>K.R. or any of the assets described above,</sup> then one-half of the undisposed funds, <sup>K.R. or any of the assets described above,</sup> at her death shall revert to the estate, heirs or assigns of the Plaintiff, and one-half of the undisposed funds, <sup>K.R. or any of the assets described above,</sup> shall revert to the Defendant or his designees, heirs or assigns.

DATED this 11<sup>th</sup> day of <sup>October</sup> ~~September~~, 1988.

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE

10/19/1989  
Charles A. Brown  
DEPUTY COURT CLERK

BY THE COURT:

Kenneth R. Rigtrup  
KENNETH RIGTRUP  
Third District Court Judge

Approved as to Form:

ROLAND URESK, ESQ.  
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct

copy of the foregoing JUDGMENT to the following Counsel for  
the Defendant this 26<sup>th</sup> day of September, 1988:

ROLAND URESK, ESQ.  
Attorney at Law  
Zions Bank Building  
156 North 200 East  
Roosevelt, Utah 84066

  
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DAVID K. SMITH, ESQ.